

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD**

DOLLAR THRIFTY AUTOMOTIVE
GROUP, INC.

Employer,

Case No. 27-CA-173054

and

COMMUNICATIONS WORKERS OF
AMERICA, LOCAL 7777

Union.

**DOLLAR THRIFTY AUTOMOTIVE GROUP'S RESPONSE
TO THE BOARD'S NOTICE TO SHOW CAUSE**

In response to the Notice to Show Cause issued by the Board in the above-captioned case on October 18, 2018, Dollar Thrifty Automotive Group (“Dollar Thrifty” or “Employer”) opposes a remand to the Administrative Law Judge (“ALJ”) for further proceedings, including reopening the record, consistent with the Board’s decision in *Boeing Company*, 365 NLRB No. 154 (2017). Dollar Thrifty submits the following in support of its opposition:

Upon a charge filed by the Communications Workers of America, Local 7777, the General Counsel issued a Complaint solely challenging several rules and policies allegedly maintained by Dollar Thrifty during the Section 10(b) period. Administrative Law Judge Amita Baman Tracy heard the case on August 30, 2016, during which all parties were afforded the opportunity to submit evidence and call or cross-examine witnesses. The fully-developed record includes evidence regarding the justifications for the challenged rules and Dollar Thrifty’s efforts to balance the rights of employees with its legal obligations.

On January 27, 2017, the ALJ issued a Decision and Recommended Order finding Dollar Thrifty had violated the Act as alleged applying the “reasonably construe” standard of the

Board's decision in *Lutheran Heritage Village-Livonia*, 343 NLRB 646 (2004). Subsequently, on December 14, 2017, the Board overruled the "reasonably construe" standard of *Lutheran Heritage* in *Boeing Company*, 365 NLRB No. 154 (2017) and announced a new standard that applied retroactively to all pending cases. Under the new standard, "when evaluating a facially neutral policy, rule or handbook provision that, when reasonably interpreted, would potentially interfere with the exercise of NLRA rights, the Board will evaluate two things: (i) the nature and extent of the potential impact on NLRA rights, and (ii) legitimate justifications associated with the rule." *Id.* at *3.


On October 18, 2018, the Board issued a Notice to Show Cause why the Complaint allegations involving the maintenance of allegedly unlawful work rules or policies should not be remanded to the ALJ for further proceedings consistent with the Board's decision in *Boeing*, including reopening the record if necessary.

Dollar Thrifty opposes a remand to the ALJ. The only allegations set out in the Complaint concern the alleged unlawful maintenance of certain rules and policies allegedly maintained by Dollar Thrifty during the Section 10(b) period. The parties fully developed the record in the proceedings below. The record includes evidence regarding Dollar Thrifty's legitimate justifications of the challenged provisions and the potential interference with employees' NLRA rights, both of which are the focal points under the new *Boeing* standard. Therefore, the Board is in the best position to apply the new *Boeing* analytical framework to the existing record. Remanding the fully developed record to the ALJ will only serve to increase the burden and expense on the parties and further delay the ultimate resolution of the allegations by the Board or a reviewing court.

For these reasons, Dollar Thrifty respectfully opposes a remand to the Administrative Law Judge ("ALJ") for further proceedings.

Dated: November 1, 2018

DOLLAR THRIFTY AUTOMOTIVE
GROUP

By: 
MATTHEW T. MIKLAVE
PETER DAGOSTINE

Robinson & Cole LLP
Chrysler East Building
666 Third Avenue – 20th Floor
New York, NY 10017-4132
Telephone: (212) 451-2900
Facsimile: (212) 451-2999
Email: mmiklave@rc.com
Attorney For Employer

Peter Dagostine
Robinson & Cole LLP
280 Trumbull Street
Hartford, CT 06103-3597
Telephone: (860) 275-8200
Facsimile: (860) 275-8299
Email: pdagostine@rc.com
Attorney For Employer

CERTIFICATION

I hereby certify that a true copy of the foregoing RESPONSE TO THE BOARD'S NOTICE TO SHOW CAUSE was served on the interested parties in this action on this 1st day of November, 2018, to the following:

Via Email:

Todd Saveland, Esq.
Counsel for the General Counsel
National Labor Relations Board, Region 27
Byron Rogers Federal Building
1961 Stout Street, Suite 13-103
Denver, CO 80294
todd.saveland@nlrb.gov

Debra Medina
Vice President
Communications Workers of America,
Local 7777
2840 South Vallejo Street
Englewood, CO 80110
dmedina@cwa7777.org

By: 
Peter Dagostine

Robinson & Cole LLP
280 Trumbull Street
Hartford, CT 06103-3597
Telephone: (860) 275-8200
Facsimile: (860) 275-8299
Email: pdagostine@rc.com
Attorney For Employer